

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**FIRST APPEAL No. 626 of 1991****For Approval and Signature:****HONOURABLE MR.JUSTICE R.S.GARG**

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the civil
judge ?

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NEW INDIA ASSURANCE CO. & 1 - Appellant(s)**Versus****VALJI AMARA RAJPUT & 2 - Defendant(s)**

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Appearance :

MS LILU K BHAYA for Appellants

NOTICE SERVED for Appellant(s) : 2,

NOTICE SERVED for Defendant(s) : 1 - 2.

MR MUKESH PRAJAPATI for Defendant(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG**Date : 06/09/2007****ORAL JUDGMENT**

1. Ms.Lilu K.Bhaya, learned counsel for the appellants. None
for the respondent No.1. None for the respondent No.2

though the name of Mr.Mukesh Prajapati, learned counsel is shown in the daily cause list.

2. The Insurance Company, being aggrieved by the award dtd.27/11/1990 passed by the Motor Accident Claim Tribunal (Main), Kutch at Bhuj in Motor Accident Claim Petition No.256 of 1985, is before this Court with a submission that the tribunal erred in making an award in sum of Rs.1,20,000=00 in favour of the claimant.
3. On being asked as to how the Insurance Company can challenge the amount which has been awarded in favour of the claimant, the learned counsel for the appellants submitted that in absence of appearance of the driver and owner, present appellants were allowed to contest the issue on all possible grounds.
4. From the judgement of the tribunal, it appears that none appeared for the respondents - driver and owner, though they were duly served.
5. After taking me through the judgement, learned counsel for the appellants submitted that the tribunal was unjustified in awarding the amount in favour of the claimant.
6. After going through the discussions made in the judgement of the tribunal, I am of the opinion that the

tribunal was not wrong in holding the monthly income of the claimant to be Rs.350=00 and also did not err in awarding the amount on the basis of said calculation. It was, however, submitted by the learned counsel for the appellants that the claimant could not work for a period of four months and sixteen days and for that period compensation at the rate of Rs.350=00 per month is awarded to the claimants, then, there would be no problem. But in the present case, the tribunal after holding that from the date of incident for a period of four months and sixteen days, the claimant could not have worked because of pain and suffering, the tribunal was not ready to believe that even on the date of the statement or so, the claimant could not work. The learned counsel for the appellants submits that in view of this finding, the tribunal was unjustified in awarding Rs.14,700=00 under the head of loss of current income for a period of 42 months. After going through the observations made and the findings recorded in para 14 of the judgement, I must hold that the tribunal was unjustified in holding that the claimant was entitled to Rs.14,700=00 for a period of 42 months at the rate of Rs.350=00. Once the tribunal said that the statement of

the claimant was not reliable that he was not doing any work, then the tribunal could not have awarded any amount under the said head. The appeal to the extent indicated above is allowed. The claimant would be entitled to a sum of Rs.1,05,300=00 with interest at the rate of 6% from the date of filing of the petition till realisation. If the appellants have paid any amount in excess of their liability as found by this Court, they would be entitled to recover the said amount from the claimant with interest at the rate of 6% per annum from the date of payment to the claimant till realisation.

7. The appeal to the extent indicated above is allowed. No costs.

(R.S. GARG, J.)

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